IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/12/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.No.32746 of 2002 and W.P.No.41319 of 2002

1. M. Gopinathan
2. Mrs. Dhanya Gopinathan
3. Deepa Gopinathan
4. Vandana Gopinath .. Petitioners in both WPs

-Vs-

1. The Sub Registrar,
Gudalur,
Nilgiris District.

2. The District Collector,
Ooty, Nilgris District. .. Respondents in both WPs

Petitions filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus and Writ of Certiorari respectively, as stated therein.

For Petitioners : Mr.M. Jayaraman

For Respondents : Mrs. Thenmozhi Sivaperumal
A.G.P.,

:O R D E R

Heard the learned counsels appearing for the parties.

2. Prayer in W.P.No.32746 of 2002 is for issuing a writ of mandamus directing the first respondent to release the four gift deeds bearing Nos.P.42, P.43, P.44 and P.45 of 1999, which were presented for registration on 24.2.1999. Prayer in the connected W.P.No.41319 of 2002 is for issuing a writ of certiorari to quash the proceedings of the second respondent in D.Dis.11068/2002 dated 23.9.2002.

3. The petitioners claim to be the owners of the disputed properties. This position is disputed by the counsel appearing for the respondents. For

the purpose of deciding the questions raised in the present writ petitions, it is unnecessary to delve into the question as to whether the petitioners are in fact the owners of the disputed properties as such question can be decided before the appropriate forum as and when the question arises.

4. The grievance of the petitioners is to the effect that though four documents were presented for registration and necessary stamp duty had been collected, the Sub-Registrar did not return the documents after registration. The Sub-Registrar had called upon the petitioners to get clarification from the Collector. Thereafter, the petitioners approached the Collector, who passed the impugned order dated 23.9.2 002. The relevant portion of the impugned order is to the following effect :-

 . . . It is informed that the land in question is covered under Section 17 of the Gudalur Janmam Abolition Act, 1969 and the title of the said lands are yet to be decided by the Settlement Officer.
Hence the petitioners are informed that their request can be considered only after deciding the title of the lands by the Settlement Officer.

5. A counter affidavit has been filed in W.P.No.32746 of 2002. From the impugned order passed by the Collector and the stand taken in the counter, it is apparent that the documents had not been registered and delivered to the petitioners mainly on the ground that the properties allegedly come under the The Tamil Nadu Gudalur Jenmam Estates (Abolition and conversion into Ryotwari) Act, 1969 and a case was pending in the Supreme Court in C.A.Nos.367 to 375 of 1977 and a prohibitory order was passed by the Supreme Court prohibiting the sale of lands and the leasehold rights of any land coming under Section 17 of the The Tamil Nadu Gudalur Jenmam Estates (Abolition and conversion into Ryotwari) Act, 1969. Relevant portion of the order passed by the Supreme Court in C.M.P.Nos.1229 to 1237 of 1997 in C.A.Nos.367 to 3 75 of 1977 is to the following effect :-

 . . . The petitioner also undertakes not to alienate any part of the properties involved in the writ petition, whether by way of sale, mortgage or charge or otherwise, till the disposal of the writ petition.

6. The contention of the learned counsel appearing for the petitioners is to the effect that the aforesaid order passed by the Supreme Court has no relevance for the present purpose. Moreover, the Civil Appeals as well as the writ petitions filed in the Supreme Court have been disposed of by order dated 7.9.1999. It is further contended that the property now involved was not the disputed property in the aforesaid cases. However, it is unnecessary to deal this question, as according to me even assuming that the present property was also involved in the cases filed before the Supreme Court, such cases have been disposed of and injunction order if any have lapsed. Even assuming that injunction order is still continuing, if there is any violation of such order by any person, he shall be bound by such order and it is always open to the aggrieved party to bring the matter to the notice of the Hon ble Supreme Court for taking appropriate action for such violation, but however, that cannot be an excuse for the registering authorities to refuse registration or to retain the documents.

7. Moreover, the registering authorities are not concerned with the consequences of a particular transaction. This is apparent from Rule 55 of the Registration Rules framed under Section 69 of the Registration Act. Rule 55 is to the following effect :-

55. It forms no part of a registering officer's duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document; but he is bound to consider objections raised on any of the grounds stated below :-

(a) that the parties appearing or about to appear before him are not the persons they profess to be;
(b) that the document is forged;
(c) that the person appearing as a representative, assign or agent, has no right to appear in that capacity;
(d) that the executing party is not really dead, as alleged by the party applying for registration; or
(e) that the executing party is a minor or an idiot or a lunatic.

8. It is also necessary to notice some other relevant provisions contained in the Registration Act as well as the Rules framed thereunder. Part XII of the Act relates to Refusal to Register. Section 71 is to the following effect:-

71. Reasons for refusal to register to be recorded.- (1) Every SubRegistrar refusing to register a document, except on the ground that the property to which it relates is not situate within his subdistrict, shall make an order of refusal and record his reasons for such order in his book No.2, and endorse the words "registration refused" on the document; and on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.
(2) NO registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered."

9. Therefore, as per the provisions contained in the Registration Act and the Rules, the registering authority has no jurisdiction to keep the documents presented for registration pending on the ground that the property involved came under The Tamil Nadu Gudalur Jenmam Estates (Abolition and conversion into Ryotwari) Act, 1969. No provision has been brought to my notice from the said Act which also prohibits the registering authority from registering any document. Registering authority is to satisfy itself regarding the execution of the document and not about the right of the person to deal with the property. Law is well settled that even if any document alienating any property is registered it would not confer right upon the alienee unless the alienor had any right. Purchaser cannot get a better title than that of the vendor. That is a matter, which normally does not come within the domain of the registering authority.

10. Learned counsel appearing for the State, however, brought to my notice the provisions contained in Section 22-A of the Registration Act, which was introduced by way of amendment under Tamil Nadu Act 48 of 1997 with effect from 28.8.1997. Section 22-A is to the following effect :-

22-A. Documents registration of which is opposed to public policy.-

(1) The State Government may, by notification in the Tamil Nadu Government Gazette, declare that the registration of any document or class of documents is opposed to public policy.

(2) Notwithstanding anything contained in this Act, the registering officer shall refuse to register any document to which a notification issued under sub-section (1) is applicable.

11. Even though such a provision came into effect on 28.8.1997, notification as contemplated under Section 22-A was issued for the first time under G.O.Ms.No.150 on 22.9.2000. Relevant portion of the notification is to the following effect :-

" . . . In exercise of the powers conferred by sub-section (1) of section 22-A of the Registration Act, 1908 (Central Act, XVI of 1908), the Governor of Tamil Nadu hereby declares the following documents as opposed to public policy, namely:-

1. Any instrument relating to, -

(i) conveyance of properties belonging to the Government or the local bodies such as the Chennai Metropolitan Development Authority or Corporations, or Municipalities, or Town Panchayats, or Panchayat Unions or Village Panchayats; or . . ."

12. It is the contention of the learned counsel appearing for the respondents that since the disputed properties belong to the Government, the documents relating to conveyance of properties belonging to such Government is opposed to public policy and as such under Section 2 2-A read with sub-section (2), the registering authority is bound to refuse any such document. The notification having been issued for the first time on 22.9.2000, does not have any retrospective effect so as to affect transactions prior to issuance of such notification. As a matter of fact, neither in the impugned order of the Collector nor in the counter affidavit filed on behalf of the respondents, such a stand had been taken. This submission made by the learned counsel for the respondents is therefore not acceptable.

13. Keeping in view the facts and circumstances of the case, the impugned letter dated 23.9.2002 /issued by the Collector cannot be sustained and is hereby quashed and the registering authority is directed to return the documents after registering the same. It is however made clear that merely because the documents would be registered and handed over to the petitioner, that will not confer any right on the petitioners if their vendors did not have any right over the property. The question as to whether the vendors/petitioners have any right or whether the State Government is the owner of the property is to be decided before the appropriate forum and no opinion is expressed on the aforesaid aspect.

14. In the result, both the writ petitions are allowed subject to the observations made. The direction issued should be complied within a period of three months from the date of receipt of the order. There shall be no order as to costs.

Index : Yes
Internet : Yes

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To
1. The General Manager,
Tamilnadu State Transport
Corporation,
Villupuram Division II Ltd.,
Vellore 9.

2. The Enquiry Officer-Ii,
Tamilnadu State Transport
Corporation,
Villupuram Division II Ltd.,
Vellore 9.